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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Report of the Joint Committee on the Bill further to amend the Companies Act, 1956 was presented to Lok Sabha on the 23rd February, 1965:—

Composition of the Joint Committee

Lok Sabha

Shri S. V. Krishnamoorthy Rao — *Chairman*

MEMBERS

2. Seth Achal Singh
3. Shri A. Shanker Alva
4. Shri Ramachandra Vithal Bade
5. Shri Rajendranath Barua
6. Shri Bali Ram Bhagat
7. Shri Dinen Bhattacharya

8. Shri N. C. Chatterjee
9. Shri Sachindra Chaudhuri
10. Shi N. Dandeker
11. Raja P. C. Deo Bhanj
12. Shri Bhaskar Narayan Dighe
13. Shri G. N. Dixit
14. Shri Gajraj Singh Rao
15. Shri Prabhu Dayal Himatsingka
16. Shri Cherian J. Kappen
17. Shri R. N. Yadav Lonikar
18. Shri Madhu Limaye
19. Shri Ghanshyamlal Oza
20. Shri Shivram Rango Rane
21. Shri J. Ramapathi Rao
22. Shri R. V. Reddiar
23. Shri Era Sezhiyan
24. Swami Ramanand Shastri
25. Shri Digvijaya Narain Singh
26. Shri Sivamurthi Swami
27. Shri Radhelal Vyas
28. Shri K. K. Warior
29. Shri Nagendra Prasad Yadav
30. Shri T. T. Krishnamachari

Rajya Sabha

31. Shri Liladhar Asthana
32. Shri Mohan Singh
33. Shri Babubhai M. Chinai
34. Shri Vimalkumar M. Chordia
35. Shri Khandubhai K. Desai
36. Shri Suresh J. Desai
37. Shrimati Shyam Kumari Khan
38. Prof. Mukut Behari Lal
39. Shri Dahyabhai V. Patel
40. Shri P. Ramamurti
41. Shri N. Sri Rama Reddy
42. Shri Awadheshwar Prasad Sinha

43. Shri Rajendra Pratap Sinha

44. Shri Hira Vallabha Tripathi

45. Shri Ramesh Chandra Vyas

DRAFTSMEN

1. Shri S. P. Sen Varma, *Special Secretary, Legislative Department, Ministry of Law.*

2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVE OF THE MINISTRY

1. Shri R. C. Dutt, *Secretary, Ministry of Finance, Department of Company Law and Insurance.*

2. Shri B. M. Mitra, *Joint Secretary, Ministry of Finance, Department of Company Law and Insurance.*

3. Shri B. P. Roy, *Secretary, Company Law Board, Department of Company Law and Insurance.*

SECRETARIAT

Shri B. B. Tewari—*Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* further to amend the Companies Act, 1956 was referred, having been authorised to submit the report on their behalf, present this their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 21st September, 1964. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri T. T. Krishnamachari, the Minister of Finance, on the 17th December, 1964 and was discussed on the 17th, 18th and 21st December, 1964 and was adopted on the 21st December, 1964.

3. Rajya Sabha discussed and concurred in the said motion on the 24th December, 1964.

4. The message from Rajya Sabha was published in the Lok Sabha Bulletin, Part II, dated the 26th December, 1964.

5. The Committee held 9 sittings in all.

6. The first sitting of the Committee was held on the 26th December, 1964 to draw up a programme of work. The Committee at this sitting decided to hear evidence of associations etc. desirous of presenting their views or suggestions before the Committee and to issue a press communique inviting memoranda for the purpose by the 15th January, 1965.

7. Thirty-one memoranda/representations on the Bill were received by the Committee from different associations/individuals.

8. At their second to sixth sittings held on the 18th to 21st January and 2nd February, 1965, respectively, the Committee heard the evidence given by ten Associations/bodies.

9. The Committee have decided that the evidence given before them should be laid on the Tables of both the Houses *in extenso*.

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 21st September, 1964.

10. The Committee considered the Bill clause by clause at their seventh and eighth sittings held on the 3rd and 5th February, 1965, respectively.

11. The Committee considered and adopted the report on the 17th February, 1965.

12. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

13. *Clause* 5: It was represented to the Committee that if the existing Companies were also to be required to re-draft their object clauses, then that would require the passing of special resolution under the Act, which would involve tremendous time and effort not commensurate with the results intended. The Committee, therefore, feel that this clause should be amended to provide that the provisions of existing clause (c) of Section 13 of the Act should continue to apply to companies in existence immediately before the commencement of the Companies (Amendment) Act, 1965 and the provisions of the proposed new clause requiring the division of objects into (i) main objects and objects ancillary thereto and (ii) other objects should apply only to new companies.

The clause has been amended accordingly.

14. *Clause* 9: The Committee noted that the entire amount of the minimum subscription for shares is not invariably called for at one time and feel that the proposed new sub-section (4) (b) should apply only to the amount payable on applications in respect of the minimum subscription.

The Committee also feel that the punishment clause in the existing sub-section (4) of section 69 of the principal Act should be retained.

The clause has been amended accordingly.

15. *Clause* 11: The Committee feel that in sub-clause (a) of the clause, the words "and only book adjustment has been made without cash having passed" are redundant and should be omitted.

The clause has been amended accordingly.

16. *Clause* 12: The amendment made in the clause is clarificatory in nature.

17. *Clause* 13: The Committee are of the opinion that an instrument of transfer, executed before the coming into force of this

measure but which is not in conformity with the proposed provisions of sub-section (1A) of section 108 of the principal Act, should also be accepted by a company upto a period of six months from the date of coming into force of the Companies (Amendment) Act, 1965.

The Committee also feel that the provisions of this clause should not prevent any person from depositing, by way of security, any shares with the State Bank of India or any Scheduled Bank or financial institution approved by the Company Law Board by notification in the Official Gazette.

The Committee further feel that in order to avoid hardship in any case, the Company Law Board should be empowered, on an application made to it in that behalf, to extend the period mentioned in the proposed sub-sections (1A) and (1B) in the clause by such further time as that Board might deem fit. Information relating to the number of extensions so granted by the Board and the period of each such extension should, however, be furnished in the annual report laid before the Houses of Parliament under section 638 of the Companies Act, 1956.

The clause has been amended accordingly.

18. *Clause* 15: The Committee feel that this clause should not apply to—

(a) any existing company except where it commences any new business which is not germane to the business which it is already carrying on at the commencement of this Bill, when enacted;

(b) any new company except where it commences any business in relation to its objects which are not its main objects or objects incidental or ancillary thereto.

The Committee also feel that private companies should continue to be excluded from the purview of section 149 as at present. Sub-clause (b) of this clause has accordingly been omitted.

The Committee further feel that even if a special resolution can not be passed when it is required, the Company Law Board should be empowered to allow the company to commence such business even if it is passed by a simple majority which is not sufficient for the passing of a special resolution.

The clause has been amended accordingly.

19. *Clause* 16: The amendment is of a drafting nature.

20. (*Original Clause* 17): The clause has been omitted as a consequence of the omission of original clause 42 (*See* para 26 below).

21. *Clause* 20 (*Original Clause* 21): The Committee feel that a company may be required under the proposed clause (d) of sub-section (1) of section 209 to include the prescribed particulars in its books of account only if it pertains to a class of companies engaged in production, processing, manufacturing or mining activities and all other companies belonging to that class are required to include such particulars in their books of account. The Committee also feel that the inspection by the Registrar, or an officer authorised by the Company Law Board, should be a routine feature and not be of an *ad hoc* or special nature.

The Committee are also of the view that it should be clarified that the books of account will also include vouchers which should be made available for inspection and investigation and should be preserved for a period of 8 years.

The clause has been amended accordingly. The other amendments are of a drafting nature.

22. *Clause* 21 (*Original Clause* 22): The Committee feel that in regard to the transactions of the company represented merely by book entries, the auditor should inquire whether they are not prejudicial to the interest of the company.

The Committee also feel that the Central Government should consult the Institute of Chartered Accountants of India before issuing an order, general or special, in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case.

The clause has been amended accordingly. The other amendments are of a verbal and drafting nature.

23. *Clause* 23 (*Original Clause* 24): It was represented to the Committee that the number of Cost Accountants in practice in this country is extremely limited and that, therefore, cost audit, if it was to be extensive, will have to be entrusted to Chartered Accountants also. The Committee are of the opinion that this difficulty could be got over by providing specifically that the Chartered Accountants who may possess the prescribed qualifications should also be allowed to undertake cost audit under this clause.

The Committee have also noted that since the cost audit was likely to reveal certain information which was regarded as confidential by the companies, the cost audit report should be filed with the Company Law Board and *not* with the Registrar and a copy of the report should be sent to the company.

The clause has been amended accordingly.

24. *Clause* 25 (*Original Clause* 26): The Committee feel that under the provisions of the proposed sub-section (1A) of section 240 of the principal Act, the Inspector should have the power, with the previous approval of the Central Government, to call for information or production of books and papers for the purpose of his investigation only from a body corporate and not from a firm or an individual.

The Committee also feel that the Inspector should not keep in his custody books and papers of a company required for the purpose of his investigation, for a period of more than six months after which he should return the same. He may, however, be authorised to call for the books and papers again if they are needed by him.

The clause has been amended accordingly.

25. *Clause* 35 (*Original Clause* 36): The Committee are of the view, that the proposed restrictions on the age limit of a director should be applicable only in the case of directors of a public company or of a private company which is a subsidiary of a public company.

The clause has been amended accordingly.

26. (*Original Clause* 42): The Committee feel that it would be difficult for the companies to note beneficial holders of more than five percent of the equity share capital unless the concerned shareholders themselves intimate such holdings.

The Committee have, therefore, omitted this clause from the Bill.

27. *Clause* 41 (*Original Clause* 43): The Committee feel that the words "and such practice is his principal occupation" are not necessary and should be omitted from the clause.

The clause has been amended accordingly.

28. *Clause* 42 (*Original Clause* 44): The Committee feel that the fee for attendance of a meeting of the Board or a committee thereof should not be limited to one hundred rupees only as that is a very

small sum and that the limit may be fixed at two hundred and fifty rupees.

The clause has been amended accordingly.

29. *Clause* 44 (*Original Clause* 46): The Committee are of the opinion that no special resolution should be necessary in the case of loans made to other bodies corporate not under the same management as the lending company, when the aggregate of such loans does not exceed ten percent of the aggregate of the subscribed capital of the lending company and its free reserves.

The Committee are also of the view that certain financial institutions should be exempted from the operation of this clause in the same manner as under sub-section (14) of section 372 of the principal Act which restricts inter-corporate investments.

The clause has been amended accordingly. The other amendment is of a clarificatory nature.

30. *Clause* 51 (*Original Clause* 53): The amendment is of a consequential nature.

31. *Clauses* 52 *and* 53 (*Original Clauses* 54 *and* 55).—The Committee feel that in order to avoid delay in the liquidation proceedings the Official Liquidator should be given requisite information as soon as final meetings are held by the companies concerned accepting final dissolution so that the Official Liquidator could keep in touch with the affairs of such companies and there is no delay in his report to the Court.

The clauses have been redrafted accordingly.

32. The Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
The 17th February, 1965.

Magha 28, 1886 (*Saka*).

S. V. KRISHNAMOORTHY RAO,
Chairman,
Joint Committee.

NOTE

I do not want to give any minute of dissent, as I have finally not dissented from the decisions arrived at. But I have always felt and even now feel that restrictive provisions in law should not be introduced unless the same be necessary to prevent any fraud or dishonest practice or necessary to improve the standard.

In any event, no provision should be introduced if the only result is additional expense without any corresponding benefit.

There are some Clauses which come within both the above categories. They offer unnecessary opportunity for criticism of Government.

NEW DELHI; P. D. HIMATSINGKA.

Dated the 22nd February, 1965.

MINUTES OF DISSENT

I

I believe too frequent amendment of the Company Law is uncalled for. It does not allow the Corporate sector of our economy to settle down to normal functioning. The Company Law was completely revised in 1956 with far-reaching amendments contained in as many as 658 Sections and 12 Schedules. Immediately thereafter, there were extensive amendments in 1960, then in 1962, then again in 1963 and further in 1964. The present Bill (Second Amendment Bill of 1964) is the fifth amendment Bill since the all-total revision of the Companies Act in 1956.

It is well-known that the cases into which the Vivian Bose Commission of Inquiry looked into and about which the Daphtary-Shastri Committee recommended, arose under the Companies Act of 1913, when the law and its administration were both loose and less stringent. But after major revision of the Company Law in 1956, as the Government spokesmen in the Parliament have themselves stated, there has hardly been any serious infringement of the Law. The Reports on the working and administration of the Companies Act also bear this out from year to year It seems, however, while paying lip-sympathy to the role of the Corporate Sector in our mixed economy, the Government are out to catch every pretext to enfetter the normal functioning of companies and assume more and more powers for themselves, which of course would give rise to corruption and political patronage.

This is especially unfortunate at a time when the economy of the country is in a sorry plight. Shortages all around, failure to achieve targets, soaring prices and a critical foreign-exchange position are but symptoms of the economic mess in which the Finance Ministry finds itself today. The capital market is dead and the investment climate has petered out. The only sane policy at this juncture is to help mobilise more and more savings into channels of joint-stock activity, with a view to rapidly increase production in all sectors of the economy. Frequent, undue and unimaginative tightening of the Company Law and vesting wide powers into the hands of the officials and their sub-ordinates, positively defeat this purpose, discourage corporate activity in the country and disillusion the hesitant foreign participant in equity capital.

Coming to the specific provisions of the Bill as emerging out of the Joint Committee, Clause 13 now provides that all transfers of shares shall be in a prescribed form, with the date stamped thereon by the prescribed authority and shall be delivered to the Company for registration within six months in the case of quoted shares and within two months in all other cases. Transfers deposited with the State Bank or any Scheduled Bank or financial institution approved by the Company Law Board, by way of security against a loan, are exempted. The Company Law Board are also empowered, in cases of hardship, to extend the time limit for delivering the transfers to the Company for registration. I believe this time limit of six months and two months is too short and should be extended at least to one year clearly in the statute. Moreover, exemptions should also have been made in the case of recognised trust holding blank transfers given by the trustee nominally holding in his name the shares belonging to the trust, in the case of companies giving guarantees and in the case of a company nominating a director on the board of another company and allowing that director to hold the qualification shares in his own name. Transfers of shares of private companies should also have been exempted, as recommended by the Inquiry Commission. I also believe that the issue of thousands of prescribed transfer forms daily, with the date marked thereon, by one prescribed authority, would only entail undue delay, thereby impairing the normal working of the stock exchanges in the country and giving rise to corrupt practices.

Clause 35 precludes a person from holding the directorship of a public company or of a private company which is a subsidiary of a public company, after he attains the age of seventy-five. I believe holding of high offices after the age of seventy-five should not be the privilege of politicians only. When a company in a general meeting approves by a special resolution any director continuing on its board after he attains the age of seventy-five, he should be allowed to continue. This will help the company to be assured of the experienced direction of a founder or a promoter, if he is in active health after the age of seventy-five.

Clause 44 widens the restrictions under section 370 of the principal Act, on inter-company loans. The new proviso prescribes a limit of thirty percent of the subscribed capital and free reserves of the lending company, for loans to any body corporate, not under the same management as the lending company and a limit of twenty percent of the subscribed capital and free reserves of the lending company for loans to companies under the same management as the lending company. Within these limits (except up to ten percent of

the subscribed capital and free reserves of the lending company for loans to companies not under the same management) a special resolution authorising the lending company to make loans up to the prescribed limits would be now required. For making loans beyond these prescribed limits, prior approval of the Central Government will have to be obtained. I believe these restrictions are unnecessary and would only hamper the free flow of essential day to day working capital. Many companies have surplus funds while many others are in need of funds to tide over temporary difficulties. The surplus funds adjust themselves to the emergent spots at the proper rate of interest for just the necessary time. The prior approval of the Central Government for making loans beyond the prescribed limits, which by themselves are meagre may take six to eight months, by which time the very purpose of the loan would be lost. This clause ignores the essential temporary and emergent character of inter-company loans and would only make the day-to-day working of companies more difficult and irksome. The existing provisions of the Companies Act (sections 295, 369 and 370) already provide for the necessary restrictions on the powers to make loans and further restrictions are absolutely uncalled for.

Everybody appreciates that a certain degree of control over management is necessary in the interest of the investing public. But the existing Company Law is already voluminous and complex. Even now for almost everything the companies have to look to the Government for approval. Before the companies know the existing law and normalise themsleves, a further spate of amendments are coming almost every year, at times twice a year. Such incessant bewildering change of law in a vital sphere of productive activity, would only imperil the economy of the country.

NEW DELHI; DAHYABHAI V. PATEL.
Dated the 18th February, 1965.

II

यह प्रसन्नता की बात है कि प्रवर समिति में हुई चर्चा के फलस्वरूप कम्पनी संशोधन विधेयक में कई संशोधन किये गये। फिर भी कुछ बातों के संबंध में असहमति होने के कारण यह असहमति-पत्र प्रस्तुत कर रहा हूं ।

संशोधन विधेयक के खंड 3 के उपखंड (1) में जो "Voucher" शब्द जोड़ा जा रहा है उसके परिणामस्वरूप प्रत्येक कम्पनी को 8 वर्षों तक समस्त आधार-पत्र, जिनमें न्यूनतम दाम के भी सम्मिलित रहेंगे, सम्भाल कर रखने पड़ेंगे। यह अनावश्यक एवं कठिन कार्य है । अतएव आधार-पत्रों के मूल्यों की सीमा बांध दी जानी चाहिये। मेरे मत से कम से कम 500 रुपये के मूल्य से अधिक के ही रखना आवश्यक होना चाहिये ।

संशोधन विधेयक के खण्ड 3 के उपखण्ड (2) के द्वारा जो अधिकारी की परिभाषा में व्यापकता लाई जा रही है उसमें यह कठिनाई आ सकती है कि प्रस्तावित परिभाषा के अन्तर्गत जिसको कम्पनी अधिकारी नहीं माने उसे कम्पनी प्रशासक अधिकारी माने । परिणामस्वरूप, व्यर्थ ही विवादास्पद स्थिति निर्माण होगी। अतएव यह आवश्यक है कि कम्पनी प्रशासन प्रतिवर्ष यह घोषित करें कि अमुक अमुक व्यक्ति भी "अधिकारी" की श्रेणी में आता है जिसके बारे की जानकारियां विधान के अनुसार कम्पनियों को देनी पड़ती हैं, वे दे सकें ।

संशोधन विधेयक के खण्ड 8 द्वारा मूल विधान की धारा 68 ए में संशोधन चाहा गया है जिसके परिणामस्वरूप कम्पनी से हिस्से प्राप्त करने के लिये यदि कोई व्यक्ति बनावटी प्रार्थना-पत्र दे अथवा कम्पनी को बनावटी नाम पर हिस्से देने, पंजीकृत करने, हस्तान्तरित करने में प्रेरित करे तो वह सजा का पात्र होगा ।

कभी इस प्रकार की स्थिति का निर्माण हो सकता है कि बनावटी नाम पर हिस्से दिये जाने आदि के बारे में आये प्रार्थना-पत्र को जब संचालक विचारार्थ ले कर, यह न जानते हुए कि यह प्रार्थना-पत्र बनावटी है अथवा सही, उसको देने, पंजीकृत करने अथवा हस्तान्तरित करने का आदेश दे सकते हैं, वैसी स्थिति में संचालक अथवा सम्बन्धित अधिकारी प्रेरित करने की परिधि में आते हैं और बिना जाने किये कार्य के लिये भी 5 वर्ष के कारावास के भागी बन सकते हैं । उस स्थिति से बचने के लिये यह अत्यन्त आवश्यक है कि प्रस्तावित धारा 68 ए (1) में "कोई भी व्यक्ति जो" ("any person who") के स्थान पर "कोई भी व्यक्ति जो जानबझ कर" ("any person who knowingly") लिखा जाना चाहिये ।

संशोधन विधेयक के खंड 8 के द्वारा जो भी व्यक्ति बनावटी प्रार्थना-पत्र देगा, उसे दण्डित किया जायेगा । किन्तु उसको ऐसी गलत सलाह देने वाले व्यक्ति को दण्ड का भागी नहीं बनाया गया । अतएव प्रस्तावित धारा 68 ए (1) (ए) में "makes" के स्थान पर "makes or causes to be made" लिखना चाहिये ।

संशोधन विधेयक के खंड 13 में काफी परिवर्तन किये गये हैं । फिर भी उसमें ट्रस्ट के पास रहने वाले हिस्सों को भी संशोधन के द्वारा चाहे गये बन्धनों से मुक्त रखना चाहिये । कारण विधान के अन्तर्गत ट्रस्ट के नाम पर हिस्से पंजीकृत नहीं किये जा सकते; वे किसी भी ट्रस्टी अथवा ट्रस्ट के नामांकित व्यक्ति के ही नाम रजिस्टर किये जा सकते हैं, जिससे ट्रस्ट का अहित हो सकता है । उस अहित से बचने के लिये ट्रस्ट में यह परम्परा चली आ रही है कि ट्रस्ट के पास शेयर सर्टिफिकेट तथा ब्लैंक ट्रांसफर के पत्रक रहते हैं । उस परम्परा से कोई हानि प्रतीत नहीं होती । अतएव ट्रस्ट के पास रहने वाले हिस्सों को भी चाहे गये बन्धनों से मुक्त रखना चाहिये ।

संशोधित संशोधन विधेयक के खंड 20 से उप-खंड (व) द्वारा चाहा गया है कि कम्पनी के रजिस्ट्रार अथवा केन्द्रीय शासन द्वारा नियुक्त कोई भी अधिकारी बिना पूर्व-सूचना दिये कम्पनी के हिसाब, किताब कागजात आदि देख सकता है ।

उपयुक्त यह होता कि इस विधान में यह कोई भी अधिकारी के रूप में व्यापक शासन व्यापन अधिकार लेने की अपेक्षा यह बन्धन रखें कि कोई भी अधिकारी जो असिस्टेंट रजिस्ट्रार से कम पद वाला न होगा उसी को जांच के लिये अधिकृत किया जावेगा ।

साथ ही सूचना दिये बिना ही जांच करने जाना व्यर्थ की परेशानियां बढ़ाना होगा ।

संशोधित संशोधन विधेयक के खंड 41 के द्वारा मूल विधान की धारा 309 में संशोधन चाहा गया है जिसके द्वारा संचालक द्वारा यदि तकनीकी योग्यता के कारण भी प्राप्त रकम पर भी बन्धन लगाया जाना है । जिस प्रकार व्यावसायिक (professional) प्रकार की सेवाओं को इसमें मुक्त किया गया है इसी प्रकार तकनीकी सेवाओं को भी मुक्त किया जाना चाहिये ।

नई दिल्ली : 17 फरवरी, 1965.

विमल कुमार चौरड़िया

III

The Bill as reported by the Joint Committee has emerged greatly improved. I am largely in agreement with the various changes that have been made. I have, however, some changes to suggest in regard to some clauses mentioned below:

Clause 20 (*Original Clause* 21): In original clause 21, it was provided that the books of account shall be open to inspection during business hours by the Registrar or by any officer authorised by Government. It was also provided by means of a proviso, that no such inspection shall be made by the Registrar or such Officer unless he is of opinion that sufficient cause exists for such inspection. The proviso has been deleted by the Joint Committee and it is stated in the Report that the Committee feel that the inspection by the Registrar or an officer authorised by the Company Law Board should be a routine feature and not be of an *ad-hoc* or special nature. I feel that this change is not reasonable and that inspection should be made by the Registrar or other Officer only if he is satisfied or is of opinion that sufficient cause exists for the inspection. The original provision should stand.

Clause 27 (*Original Clause* 28): This clause amends section 241 and provides that interim reports submitted by an Inspector need not be sent to the company. I feel that the interim report as and when submitted by the Inspector should also be sent to the company. This is only fair, because if the compony is furnished with a copy of the interim report, it will be able to make suitable

representation to correct any misapprehension on the part of the Inspector. This will help in the final report being made on a correct appraisal of facts and circumstances.

Clause 51 (*Original Clause* 53): This clause proposes deletion of Sections 410 to 415 thereby abolishing the present Advisory Commission and constituting instead an Advisory Committee which will not, however, have the same powers and functions as the Advisory Commission. The setting up of the Advisory Commission was fully debated in Parliament when the Companies Bill of 1953 was under discussion. It was also carefully considered by the Joint Committee on the said Bill. The Joint Committee then recommended that the Advisory Commission should adequately represent the various interests concerned and that it should be put on a permanent basis. The then Finance Minister, Shri C. D. Deshmukh, while speaking in the Lok Sabha on the functions of the Advisory Commission, expressed the hope that in course of time the Advisory Commission will help Government to build up sound traditions for regulating the working of Joint stock companies in this country. The Reports of the Company Law Advisory Commission for the last several years which are appended to the Annual Reports on the Working and Administration on the Companies Act, 1956 furnish proof of its usefulness and also that it has been building up such sound traditions in respect of various matters which had come up before it. It has also, so far as I am aware, infused a sense of confidence in the business community, who have a feeling that their problems are also looked into by an impartial authority and are not dealt with arbitrarily by Government. In my opinion, it is very necessary that the sense of confidence which the working of the Advisory Commission has engendered in the business community should not be disturbed. In view of the careful consideration which had been given to this question by Parliament and by the interests concerned at the time of the deliberations on the Companies Bill, 1953, and in view of the successful working of the Advisory Commission during the past few years, I feel that the Advisory Commission should be retained. I am, therefore, for the deletion of this clause.

Clause 56 (*Original Clause* 58): A new section is proposed to be inserted so that Government or any person is not compelled to disclose the sources of information received by it or him to any Court, Tribunal or other authority. This provision in my opinion is not in consonance with sound juridical principles. It will open up opportunities for supplying false information by interested parties in order to blackmail a company or those in management of a company for their ulterior objectives. Every person against whom any information is given is entitled to know the identity of the informant and has also

a right to check on the integrity of the person and the authenticity of the information. I feel that if this right is not available to aggrieved parties, it will encourage black-mailing by unscrupulous persons and also encourage vindictive actions by prejudiced officers. The powers of a Court or a Tribunal which is a quasi-judicial body should not also be curtailed in an arbitrary and unfair manner.

NEW DELHI; N. C. CHATTERJEE
Dated the 19th February, 1965.

IV

This Bill seeks to implement the recommendations of the Commission of Inquiry and the Daphtary—Sastry Committee. The Joint Committee has taken this opportunity to:

(i) strengthen the provisions relating to investigation into the affairs of companies and provide for more effective audit in dealing with cases of dishonesty and fraud in the corporate sector; and

(ii) simplify some of the procedural matters.

But if we go through the amended Bill, in all its practical aspects, we can say without any fear of contradiction that the Joint Committee have failed to meet the real object of the Bill by ignoring certain important demands of the share-holders' associations and chartered accountants' association and prominent auditors' views as urged by them in their respective memoranda and evidence tendered before the Joint Committee.

One of the main demands of the share-holders association was to provide a statutory obligation on the part of the Directors and managing agents to take necessary approval of the general body of share-holders in respect of all matters of financial dealings. Each and every share-holder should be individually informed at least one month before the meeting about the proposed resolutions and actions to be brought before the general body meeting, besides news-paper publications. Except few major financial business, there is no amendment to meet the general but rightful desire of the share-holders as such. The scope of strength and working freedom should be enlarged whereas all public limited companies' authority and scope of working should be exercised absolutely with broad based principles of democracy and socialism by accepting all special resolutions that are passed on the basic ideology of voting *i.e.*, "one man one vote" irrespective of his share contributions.

If this procedure is not introduced in all public limited companies, the purpose of all special resolutions would be defeated by big financial magnates in all public Companies. Hence I disagree with the amended Bill simply providing special resolutions without introducing the principle of "one man one vote" irrespective of his/her share-values in that particular company. Otherwise, the affairs of companies, at least in dealing with cases of dishonesty and fraud in the Public Corporate Sector, cannot be investigated properly. The spirit of that object will be defeated.

It is necessary to appoint independent auditors with strong character for making the audit more effective and purposeful. The Central Government should maintain a list of expert auditors, Chartered Accountants and Cost Accountants in consultation with the Chartered Accountants associations and Cost Accountants bodies as approved by the Union Government. The rules and procedures of auditing systems in various fields should be framed and accepted with full consultation of respective recognised auditors and their organised bodies. At every step their active consultation and cooperative efforts will give good results to remove dishonesty and fraud in the Corporate Sector. The auditors' position should not be as that of a Commission agent or servant of any company, but his position should be a very powerful one who can play an eminent part to check all kinds of malpractices committed by officials of Company Law administration or Directors of any company. Any company may go astray if such full powers are not vested in auditors and their parent bodies to supervise, guide and control the finances according to the strict observation of the respective bye-laws that are accepted by the general body of share-holders. So there should be statutory provision to have frequent consultations and investigations of frauds in the companies by the auditors or group of auditors' body with independent powers to take necessary steps to remedy the situation. Company Law administration is more powerful which is likely to become over-lord of the companies and it is but natural that absolute powers will positively corrupt the Company Law administration. Therefore, always there should be a statutory obligation on the part of the administration so that each and every action or rules and regulations of auditors and accounting system should be laid on the Table of both the Houses of Parliament. In case of glaring injustice by Company Law administration, a discussion may be raised in Parliament.

There are so many small and medium size companies having very little profit. During initial periods every company will gain no

profit or there may even be some losses to the new companies. Therefore, it would be grave injustice to the directors or managing partners to fix their remunerations only on the basis of profit percentage. As a special remuneration to the working directors for a specific period at least, a total of one thousand rupees per month should be given as per the approval of the share-holders' general body meeting. Instead of restricting the remuneration only on profit percentage basis, certain amount as decided by the general body members should be given to the working directors according to their capacity and abilities.

Many political parties, especially the ruling party, depend upon public and private companies' donations to further their programmes. Under the existing law upto 5 per cent of the net profits can be donated to any political party as per decision of the directors only, whereas general share-holders belong to all political parties. Therefore, clause 44 (Original Clause 46) may be amended with the following proviso to check the political interference in the administration of companies:

"Provided further that the total donations so made to all political parties and charitable registered institutions corporate shall not exceed without the prior approval of the general meeting of the share-holders:

(a) Five per cent of the net profit for the current balance sheet of the previous year of the donating company;

(b) any percentage of the net profit or reserve fund of the liquidating company where all such donations are made to any of the charitable non-political institutions as recommended and approved by the special resolution of the share-holders passed by two-third majority in such general meeting."

The assets of any liquidating company may be transferred to any one or more charitable non-political institutions as approved by the share-holders of that company. Hence I am obliged to record my minute of dissent.

NEW DELHI: SIVAMURTHI SWAMI.

Dated the 22nd February, 1965.

V

कम्पनी कानन द्वितीय संशोधन विधेयक का संयुक्त संसदीय समिति में जो संशोधित रूप बना है उस के कुछ पहलुओं से मैं सहमत नहीं हूं । अपना असहमति-पत्र मैं नीचे प्रस्तुत कर रहा हूं :—

इस कम्पनी संशोधन विधेयक का उद्देश्य कम्पनियों के संचालन में जो अनाचार और अप्रवृत्तियां पाई गई हैं उनको दूर करना है । विवियन बोस जांच समिति की रिपोर्ट से सार्वजनिक हित तथा हिस्सेदारों के हित पर तिलांजलि देकर अपना स्वार्थ साधने की समाज विरोधी प्रवृति पर काफी प्रकाश पड़ा । इन प्रवृतियों पर रोक लगाना उचित और आवश्यक भी है । मगर केन्द्रीय सरकार तथा उसकी नौकरशाही के हाथों में अनिर्बन्ध अधिकार देने से क्या समाज हित की रक्षा होगी ? वर्तमान स्थिति में अगर सरकार और नौकरशाही को हर मामले में निश्चित और सीमित नहीं बल्कि व्यापक विवेकाधीन अधिकार दिये गये तो उसके दो बुरे नतीजे निकलेंगे :

(क) सरकार को और उस पर कब्जा होने के फलस्वरूप सत्तारूढ़ दल को निजी पूंजी और निजी क्षेत्र को अपने दलीय प्रभाव में ला कर उनसे नाजायज़ तरीकों से चन्दा इकट्ठा करने का और ज्यादा मौका मिलेगा; (ख) भ्रष्टाचार के वर्तमान वातावरण में अपने नये अधिकारों का दुरुपयोग कर निजी क्षेत्र को और औद्योगिक संचालकों को बिना वजह सताने की धमकी देकर पैसा बनाने का नौकरशाही को भी अवसर मिलेगा । इसलिए जहां कम्पनियों के अनाचार पर रोक लगानी चाहिए वहां नौकरशाही को भी एक मर्यादा के अन्दर बांधना चाहिए । जो कम्पनियां और जो उद्योग समाजहित विरोधी काम करते हैं उनका सीधा राष्ट्रीयकरण करना अच्छा होगा बनिस्बत इसके कि सरकार और नौकरशाही को उन के ऊपर नियंत्रण रखने के हेतु हम अमर्यादित अधिकार प्रदान करें ।

संयुक्त समिति द्वारा संशोधित विधेयक में केन्द्रीय सरकार को निम्न व्यापक विवेकाधीन अधिकार दिये गये हैं जिनका दुरुपयोग होने का मुझे अंदेशा है :—

(एक) खण्ड 15 के अनुसार कम्पनी की साधारण सभा में विशेष प्रस्ताव पारित न होने पर भी नया धन्धा करने की छट संचालकों को देने का अधिकार सरकार को मिलता है । अच्छा तो यह होता कि सरकार को उस में छूट देने का अधिकार न होता या विशेष प्रस्ताव की जगह पर बहुमत वाले प्रस्ताव का प्रबन्ध होता ।

(दो) खण्ड 20 के अन्तर्गत बिना कोई कारण बताये या पूर्व सूचना दिये रजिस्ट्रार या और किसी सरकारी अधिकारी को कम्पनियों की हिसाब की किताबें आदि देखने का अधिकार दिया है । इस अधिकार के बारे में मुझे कुछ नहीं कहना है । मगर मैं चाहता हूं कि किताब देखने के पहले वह अपनी राय लिखित रूप में नोट करें कि वह क्यों ये सब देखना चाहता है । इस से इस व्यापक अधिकार का दुरुपयोग नहीं होगा और कम्पनियों के अनाचार पर नियंत्रण भी रहेगा ।

(तीन) खण्ड 25 के मातहत इंस्पेक्टर को कम्पनियों से जानकारी हासिल करने का या उन से किताब आदि मांगने का अधिकार मिलता है । साथ ही यह काम करने के लिए दूसरे किसी भी व्यक्ति को अधिकृत करने की सत्ता भी उसको मिल गई है । मेरी राय में यह उचित नहीं है । यह अधिकार किन किन लोगों को होगा यह कानन ही में स्पष्ट कर देना चाहिए। मेरी राय में यह अधिकार इंस्पेक्टर स्तर के अधिकारियों ही को दिया जाये।

(चार) खण्ड 13 में अनाम हस्तांतरण (बलैक ट्रांसफर) के चलन की मियाद को बढ़ाने का अधिकार कम्पनी कानन बोर्ड को मिला है । अधिक से अधिक कितना समय बढ़ाया जाय यह कानन ही में कह देना उचित होगा। मेरा सुझाव है कि यह सीमा एक साल की हो । अपील करने पर इस में कम्पनी कानन बोर्ड द्वारा जो अपवाद किये जायेंगे उन के प्रकाशन की सिर्फ व्यवस्था करने से काम नहीं चलेगा। कम्पनी कानन बोर्ड के अधिकार पर भी मर्यादा लगानी चाहिए।

(पांच) खण्ड 44 के अन्तर्गत कम्पनियों द्वारा अन्य कम्पनियों को कर्जा देने पर 30 और 20 प्रतिशत तक की मर्यादा निश्चित की गई है । मगर इस में चाहे जितनी छट देने का सम्पूर्ण अधिकार केन्द्रीय सरकार को दिया गया है । अगर ऐसा माना जाता है कि विधेयक में जो मर्यादा रखी गई है वह बहुत कम है तो उस को थोड़ा बहुत बढ़ाया जाता । मगर बिना मर्यादा वाला अधिकार नौकरशाही को देने के पक्ष में मैं नहीं हूं ।

(छै) इसी खण्ड 44 में यह संशोधन पास होने के पूर्व दिया गया कर्जा चुकाने सम्बन्धी निश्चित की गई काल मर्यादा बढ़ाने का अधिकार सरकार ने ले रखा है। वाकई इस सरकार की और नौकरशाही की सत्तालालसा अद्भुत है। वर्तमान कानन के अन्तर्गत राजनीतिक दलों को चन्दा देने की छूट है। सरकार के हाथ में आज जो व्यापक नियंत्रण अधिकार हैं उन के फलस्वरूप सत्तारूढ़ दल ने निजी क्षेत्र से हमेशा चन्दा वसूला है। इसका लेखा जोखा वित्त मंत्रालय मंत्री ने फिलहाल ही प्रस्तुत किया है। यह कम्पनियों द्वारा दिया गया अधिकृत चन्दा है। अनधिकृत चन्दे का उसमें उल्लेख तक नहीं है । वह तो उससे कई गुना ज्यादा होगा । सरकारी जानकारी के मुताबिक 1961 के पश्चात् दो वर्षों की रपट के आधार पर कम्पनियों द्वारा कुल रु० 1,15,00,000 विभिन्न राजनीतिक दलों को दिया गया । उसमें सत्तारूढ़ दल का हिस्सा रुपया 98 लाख से भी अधिक स्वतंत्र पार्टी-का रु० 15 लाख 65 हजार, प्रजा सोशलिस्ट पार्टी का रु० 54,000, कम्यु निस्ट पार्टी का रु० 2,800 और सोशलिस्टों का सिर्फ रुपया 351 रहा। वर्तमान नियंत्रण-अधिकारों का इस्तेमाल कैसे होता है यह इन आंकड़ों से बिल्कुल साफ होता है । जिस तरह सरकार वर्तमान अधिकारों का दुरुपयोग करती है उसी तरह निजी पूंजी भी भ्रष्टाचार का इस्तेमाल कर अपने मकसद को हासिल करती है । और दोनों मिलकर आम जनता का और ग्राहकों का शोषण करते हैं। इसलिए इस विधेयक की उपरोक्त धाराओं के मैं विरुद्ध हूं ।

खण्ड 35 के जरिये सार्वजनिक कम्पनियों तथा उन से नियंत्रित कम्पनियों के निदशकों पर पहले जो आयु सीमा थी वह बढ़ाकर अब 75 की गई है । मैं चाहता हूं कि यह सीमा 65 हो । । संयुक्त समिति के सामने यह कहा गया कि अगर मंत्रियों पर आयु सीमा नहीं है तो निदशकों पर क्यों ? मेरा जवाब यह है कि यह सीमा निर्देशकों पर भी रहे और मंत्रियों पर भी । यहां यह कहना गैर मुनासिब नहीं होगा कि सरकारी नौकरों के लिए यह आयु सीमा 58, उच्चन्यायालयों के जजों के लिये 60, और सर्वोच्च न्यायालय के जजों के लिए 65 है। फिर निर्देशकों के लिए अपवाद क्यों ? जब तक ऐसी सीमा नहीं रहेगी औद्योगिक तथा दूसरे किसी क्षेत्र में युवकों को और नये लोगों को कोई मौका नहीं मिलेगा आगे बढ़ने का या तेजी से नवनिर्माण करने का ।

नई दिल्ली ; मधु लिमये

22 फरवरी, 1965

VI

We are afraid that the present piece of Legislation, far from removing the lacunae and plugging the loopholes, has given further lease to the malpractices by the companies and corporate sector. It is regrettable to note that even the amendments that were suggested in the Bill have been watered down in the Joint Committee.

Regarding the blank transfer system, we strongly feel that it should have been completely abolished as in the United Kingdom. While the Government is fully aware of the havoc done by the business tycoons with the nefarious practice of blank transfer system, still they plead helpless in rooting out this evil. Coming to clause 23 (original clause 24) the Joint Committee have recommended that chartered accountants who may possess the required qualities should also be allowed to undertake cost audit. The reasons that the number of cost accountants in practice is very limited does not appear to be justified to us. We feel that if enough scope is given, more cost accountants will become available. Even if the required number of cost accountants were not forthcoming the Government may have constituted a separate cadre of cost accountants as full time public servants to carry on the job.

NEW DELHI; DINEN BHATTACHARAYA

Dated the 22nd February, 1965. K. K. WARIOR

VII

It was after prolonged, exhaustive and protracted enquiries extending over some years, that the law relating to companies in India was thoroughly recast and comprehensively codified in a voluminous

self-contained enactment,—The Companies Act, 1956,—containing 658 Sections and XII Schedules. It was further amended extensively in 1960, 1962, 1963 and 1964. The present Bill,—The Companies (Second Amendment) Bill of 1964, seeks once again to amend it very extensively.

The continual amendment of such an important enactment governing a very significant and most active part of the Private Sector in the Indian economy is itself a sufficient condemnation of the present Bill. This *a priori* view is strengthened by a closer examination of the ostensible reasons advanced in support of it, namely, that it seeks:

(a) to implement the recommendations of the Commission of Inquiry into the administration of the Dalmia-Jain Companies, as reported upon by the Daphtary-Sastri Committee;

(b) to strengthen the provisions relating to investigation into the affairs of companies;

(c) to provide for more effective audit in dealing with cases of dishonesty and fraud in the corporate sector; and

(d) to simplify some of the procedural requirements which are at present burdensome to the companies without being of corresponding advantage to Government.

Of the foregoing reasons for introducing this Bill, it is plain that the last of them was merely incidental. The principal reasons advanced in support of this measure were admittedly those indicated at (a), (b) and (c) above. But on examining these more closely, it transpires that as regards the first and most important of them there was no evidence at all,—certainly none was adduced on behalf of Government before the Joint Committee,—that fraudulent practices of the kind discovered in the Dalmia-Jain Companies were "legally" possible, or had in fact been resorted to, even under the present state of the law. It is important to note in this connection that the legal framework within which industrial and commercial concerns in the corporate sector have now to operate is far more complex than was the case before 1953. They have now to comply not merely with the complicated and rigorous provisions of an all-embracing Companies Act, but also with other relevant and very comprehensive group of legislation such as that regulating the Issue of Capital, the licensing of new industrial units and of their expansion, the licensing of Import of Capital Goods, Raw Materials, Stores and Spares, the Regulation of Foreign Exchange transactions and the

like. With this sort of multifarious and integrated regulatory legislation already in force, governing almost every important area of activity, superimposed upon the already comprehensive Companies Act, *it is in my opinion quite unlikely that "legal frauds" in company management and administration of the kind and magnitude disclosed in the Dalmia-Jain Companies can occur any longer.*

The other two purposes advanced in support of this Bill, namely, to strengthen the provisions relating to investigation into the affairs of companies and to provide for more effective audit in dealing with cases of dishonesty and fraud, are also entirely unsupported by any evidence justifying the need for such extraordinarily *wide-sweeping powers* as are sought to be conferred upon the Central Government for these purposes by this Bill. Moreover, while the "Statement of Objects and Reasons" refers in this connection to additional powers required in dealing with specific cases of this type, the relevant clauses in the Bill go much further and are designed to confer upon the Central Government draconian powers over *all* companies, regardless of the character of their management.

I am firmly of opinion that this measure is both unnecessary and undesirable. It will confer powers upon the Company Law Board and/or the Central Government in relation to the generality of companies which are quite uncalled for. It will cast an unjust and grievous burden upon the vast majority of honest companies, most of them engaged in medium or small scale industries, just at a time when the most urgent need is that the private sector should rapidly and vigorously go forward and produce more and more goods and services so that the economy, which has been stagnant in recent years and is now in the grip of acute inflation, may once again become as buoyant as it was some four or five years ago. If this measure is enacted the capital and investment market will continue to remain depressed; the economy will remain stagnant; and perhaps, its gravest consequence will be not merely to discourage foreign investment and/or collaboration in Indian projects, but even to induce a good deal of *dis*-investment. I am strongly of opinion, therefore, that this Bill should be withdrawn.

Subject to my basic objection to the Bill as a whole, I turn now to some of the specific clauses of the Bill as reported by the Joint Committee. While the Bill has emerged from the Committee with some improvement, there remain many matters in respect of which it still requires to be considerably altered. Some of the more important of these are mentioned below:—

Clause 13—This clause suffers from two major defects, namely,

(1) The period of currency of blank transfers in the prescribed form should be twelve months, instead of six.

Without this, the liquidity of the share markets will be seriously impaired.

(2) In the case of Shares held in fiduciary capacity, there should be no time limit to the currency of blank transfers as in the case of Shares pledged with banks and other financial institutions.

Clause 20 (*Original Clause* 21)—In this clause as originally drafted it was provided (by means of a proviso) that the books of account of a company shall be open to inspection during business hours by the Registrar or by any officer authorised by Government *provided* he was of opinion that sufficient cause existed for such inspection. That proviso has been deleted by the Joint Committee on the ground that the inspection by the Registrar or an Officer authorised by the Company Law Board should be a routine feature of the administration of Company Law in this country. This is not reasonable, for I feel that such inspection by the Registrar or other officer should be made only if he is satisfied that sufficient and specific cause exists for the inspection. The original proviso should therefore be restored.

Clause 21 (*Original Clause* 22)—Sub-Clause (b) should be deleted altogether, as it virtually confers unlimited power upon the Central Government to enact substantive legislation concerning the duties and responsibilities of Auditors far beyond anything contemplated by Section 227 of the principal Act.

Clause 23 (*Original Clause* 24)—This Clause, which provides for the compulsory audit of *cost accounts* of companies engaged in production, processing, manufacturing or mining activities, should be deleted altogether for the following reasons:—

(i) The regular maintenance of proper cost accounts, which it implies, presupposes a sophisticated stage of industrial development and management accounting which it will take considerable time to reach in this country.

(ii) It was admitted in the evidence submitted before the Joint Committee on behalf of two such authoritative bodies as the Institute of Chartered Accountants of India and the Institute of Cost & Works Accountants of India that no more than about 20 per cent of companies in India were maintaining any sort of cost accounts properly so called.

(iii) To require a statutory audit of cost accounts would, in these circumstances, be wholly premature.

(iv) It would impose an unwarranted burden upon small companies engaged in medium and small scale industries.

(v) It was also admitted that the number of experienced accountants, especially Cost Accountants, competent to undertake such audit was strictly limited, there being only some eight or ten firms of Cost Accountants in practice.

(vi) Moreover, to prescribe an audit of cost accounts independently of the audit of financial accounts, as is proposed in this clause, could lead to conflict and confusion as between the two.

(vii) The disclosure of the cost structure of companies engaged in competitive enterprises would cause serious disadvantage to the best managed companies; and this sort of prospect (of publicity being given to confidential cost data) would almost certainly persuade many prospective foreign concerns not to proceed with their investment and/or collaboration projects in India. It would be no answer to their genuine apprehensions in this respect that the Cost Audit Report would be submitted only to the Central Government and would not have to be filed with the Registrar of Companies. Once a statutory Cost Audit was known to have been undertaken, every Shareholder would be entitled to have a copy of the relevant Audit Report, with the result that the confidential character of the cost data could not possibly be preserved.

(viii) So far as is known, there is no other country in which companies are required *by law* to maintain cost accounts or to have them audited.

Clause 25 (*Original Clause* 26)—This clause, in so far as it applies to a company whose affairs are *not* under investigation, that is to say, to a body corporate "other than a body corporate referred to in sub-section (1) (of Section 240)", needs extensive amendment. The effect of this Clause as it stands is that such a company would be treated in all respect on the same footing as if its affairs were also under investigation. This is most unreasonable and would be destructive of the credit and reputation of such companies.

Clause 51 (*Original Clause* 53)—By this Clause, which deletes sections 410 to 415 of the principal Act, it is proposed to abolish the Company Law Advisory Commission and to appoint instead an "Advisory Committee" for advising upon "such matters arising out of the administration of this Act as may be referred to it" by the Central Government or the Company Law Board.

This constitutes a complete reversal of policy without any justification whatsoever. The setting up of the Advisory Commission as a permanent feature of the Company Law administration was carefully examined by the Joint Committee on the Companies Bill 1953 and was subsequently fully debated and approved in Parliament. On that occasion the then Finance Minister made the following statements in Parliament:—

> "In future the permanent Advisory Commission will have the duty of advising Government in respect of those matters which are specifically provided in the Bill.... it is my hope that in course of time this Advisory Commission will help Government to build up sound traditions for regulating the working of joint stock companies in this country."
>
> "I should say that the chances are that in almost all cases—I should not like to mention a percentage—we shall be guided by the advice of the Advisory Commission."
>
> "What I foresee is that a body of case law will grow as a result of the close working of the advisory commission and the central authority. Both of them will learn;....what I expect is as a result of these discussions, a body of case law and philosophy will grow, and we shall jointly regulate the affairs of the companies in these respects which are in controversy today."

As against this, neither in the "Statement of Objects and Reasons" nor in the "Notes on Clauses" of the present Bill are there any reasons advanced for abolishing what was intended to be, and what indeed Parliament desired should be, a "permanent" Commission. Similarly, even in the Joint Committee, no attempt was made to justify this drastic proposal.

The Reports of the Company Law Advisory Commission and of the Company Law Administration for the last several years furnish ample proof of the usefulness of the Commission over these years. The present sections 410 to 415 include provisions which made it obligatory for Government to refer certain important matters to the

Advisory Commission for their advice. In the discharge of its duties the Commission has done much to inspire confidence in the corporate sector *vis-a-vis* the exercise of purely executive powers by Government in a field in which such powers are vast and all pervasive and the scope for arbitrary decisions extensive. The Advisory Commission has, in fact, gone a long way towards fulfilling those hopes and expectations with which it was constituted with the full approval of Parliament. In these circumstances, I am unable to see any justification whatsoever for replacing the Commission by an "Advisory Committee" which need not be consulted by Government at all and which, having no statutory powers or duties, can fill only a minor role of little value either to Government or to the corporate sector. This Clause should therefore be deleted.

Clause 56 (*Original Clause* 58)—This is a most extraordinary provision. It seeks to substitute the present Section 635A of principal Act by two new Sections 635A and 635AA which would have the effect not merely of protecting the Government and public servants for anything done in good faith but also of shielding informers and blackmailers even when, *acting in bad faith,* they may active the machinery of Government against innocent parties. To claim the privilege of secrecy, even against courts and tribunals, so as to resist the demand by injured parties for the disclosure of the source of information which may have resulted in their harassment or in wrongful action being taken against them, can never be justified. This sort of claim, if conceded, would almost certainly lead to grave abuses. It would lay the basis for false information by interested parties and even blackmailers against a company and its management; and it can also be misused as a weapon for political purposes. In view of this, the proposed new section 635AA sought to be inserted by this Clause should be deleted.

NEW DELHI; N. DANDEKER
Dated the 22nd February, 1965.